

Message Text

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PAGE 01 THE HA 00933 230636Z
ACTION EUR-12

INFO OCT-01 ISO-00 L-03 TRSE-00 JUSE-00 SEC-01 /017 W
-----230644 007351 /15

R 221525Z FEB 77
FM AMEMBASSY THE HAGUE
TO SECSTATE WASHDC 9925
INFO AMEMBASSY BONN

C O N F I D E N T I A L THE HAGUE 0933

BONN FOR CUSTOMS ATTACHE

E.O. 11652: GDS
TAGS: CGEN, NL
SUBJ: JUDICIAL ASSISTANCE - REQUEST FOR SEIZED CURRENCY

REF: THE HAGUE 0524

1. AS REPORTED REFTEL, GON TAKES POSITION THAT CONFISCATED CURRENCY IS DUTCH GOVERNMENT PROPERTY. TEXT OF FEB 18 FOREIGN MINISTRY NOTE FOLLOWS: REQUEST FURTHER GUIDANCE ON QUESTION OF CURRENCY AND ON DUTCH OFFER (LAST PARA OF NOTE) TO MAKE OFFICIAL REPORTS, TAPES AND OFFICAL TRANSCRIPT OF TELEPHONE TAPS AVAILABLE FOR USE IN US CRIMINAL PROCEEDINGS.

2. BEGIN QUOTE: THE MINISTRY OF FOREIGN AFFAIRS PRESENTS ITS COMPLIMENTS TO THE EMBASSY OF THE UNITED STATES OF AMERICA AND WITH REFERENCE TO THE LATTERS NOTE NO. 28 OF 24 NOVEMBER 1976, HAS THE HONOUR TO INFORM THE EMBASSY THAT THE REQUEST OF THE UNITED STATES AUTHORTIES FOR THE TRANSFER OF A CERTAIN SUM OF UNITED STATES CURRENCY CONFISCATED IN ROTTERDAM HAS BEEN THE SUBJECT OF CONSULTATIONS BETWEEN THE NETHERLANDS MINISTRIES OF JUSTICE AND FINANCE.

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DURING THESE CONSULTATIONS IT EMERGED THAT THE CUSTOMS AUTHORITIES IN ROTTERDAM HAD ALREADY OFFERED NOT TO INSTITUTE PROCEEDINGS AGAINST THE CORNELDER SHIPPING COMPANY, THE CARRIER OF THE VAN IN WHICH THE MONEY WAS HIDDEN, UNDER ARTICLE 171 OF THE CUSTOMS AND EXCISE ACT IF THE COMPANY WOULD RENOUNCE ALL CLAIMS TO THE CONFISCATED MONEY. AN OFFICIAL REPORT HAD BEEN DRAWN

UP CONCERNING THE FACT THAT THE COMPANY HAD SUBMITTED AN INCOMPLETE STATEMENT OF GOODS IMPORTED INTO THE NETHERLANDS AND TO AVOID CRIMINAL PROCEEDINGS, THE COMPANY HAD ACCEPTED THE OFFER. PURSUANT TO ARTICLE 118, PARAGRAPH 4, OF THE CODE OF CRIMINAL PROCEDURE, THE MONEY (WHICH IS NOW IN THE CUSTODY OF THE GOVERNMENT TAX DEPARTMENT) CAN BE TREATED AS THOUGH IT HAD BEEN FORFEITED.

AT FIRST SIGHT, THE GRANTING OF THE UNITED STATES REQUEST FOR LEGAL ASSISTANCE WOULD APPEAR TO BE GOVERNED BY ARTICLE 552M, PARAGRAPH 2, OF THE CODE OF CRIMINAL PROCEDURE, WHICH PROVIDES THAT THE MINISTER OF JUSTICE MUST ISSUE AN AUTHORISATION FOR THE REQUEST TO BE GRANTED. SUCH AUTHORISATION CAN ONLY BE GIVEN WHEN THE REQUEST IS BASED ON THE PROVISIONS OF A CONVENTION, AND AFTER CONSULTATION WITH THE MINISTER OF FINANCE. IN THIS INSTANCE, THERE IS NO SUCH BASIS.

THE ONLY INSTANCE IN WHICH AN AUTHORISATION CAN BE DISPENSED WITH IS WHEN THE GRANTING OF THE REQUEST CANNOT AFFECT ANY INTEREST WHICH THE GOVERNMENT TAX DEPARTMENT MAY HAVE IN THE MATTER. IN THAT CASE THE REQUEST CAN BECOMPLIED WITH UNDER ARTICLE 552K, PARAGRAPH 2, OF THE CODE OF CRIMINAL PROCEDURE, EVEN THOUGH THE REQUEST HAS NO BASIS IN A CONVENTION.

IN THE PRESENT CASE, THERE CAN BE NO POSSIBILITY OF ANY INTERST OF THE GOVERNMENT TAX DEPARTMENT BEING AFFECTED IF THE UNITED STATES AUTHROITIES ARE PREPARED CONFIDENTIAL

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TO TRANSFER TO THE NETHERLANDS GOVERNMENT A SUM EQUAL TO THAT OF THEMONEY CONFISCATED VIS. US \$277,870. SUBJECT TO THIS CONDITION AND ONCE THE MONEY HAS BEEN TRANSFERRED, THE NETHERLANDS GOVERNMENT IS PREPARED TO COMPLY WITH THE REQUEST OF THE UNITED STATES AUTHORITIES.

THE TRANSFER OF THAT SUM BY THE UNITED STATES AUTHORITIES WILL NOT OF COUSE AFFECT THE NETHERLANDS GOVERNMENTS LIABILITY WITH RESPECT TO ANY CIVIL CLAIMS ON THE CONFISCATED MONEY BY PRIVATE PERSONS OR THE EXERCISE BY THE UNITED STATES OF ANY RIGHTS IT MAY HAVE TO RECOVER THE SAME.

LASTLY, IT SHOULD BE NOTED THAT THE NETHERLANDS GOVERNMENT INTENDS TO SEND THE UNITED STATES AUTHORITIES ALL OFFICAL REPORTS DRAWN UP IN CONNECTION WITH THIS CASE REGARDLESS OF WHETHER OR NOT THE LATTER ARE WILLING TO ACCEPT THE AFOREMENTIONED CONDITION. THE REPORTS INCLUDE DOCUMENTS DRAWN UP ON OATH OF OFFICE

BY THE POLICE IN AMSTERDAM RELATING TO MONITORED TELEPHONE CONVERSATIONS BETWEEN A DR. GURDER SANGHA SINGH, WHO COMES FROM INDIA AND IS THOUGHT TO BE RESPONSIBLE FOR ORGANISING THE LARGE SCALE IMPORTATION OF NARCOTICS INTO THE UNITED STATES AND CANADA, AND MEMBERS OF HIS CRIMINAL ORGANISATION IN SAN FRANCISCO (USA) AND VANCOUVER (CANADA). IN PRINCIPLE, THE NETHERLANDS GOVERNMENT IS ALSO WILLING TO MAKE AVAILABLE TO THE UNITED STATES DEPARTMENT OF JUSTICE THE TAPES ON WHICH THESE TELEPHONE CONVERSATIONS ARE RECORDED, FOR AS LONG AS THE DEPARTMENT MAY NEED THEM FOR THE CONDUCT OF CRIMINAL PROCEEDING IN THE UNITED STATES. END QUOTE. MCCLOSKEY

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: n/a
Control Number: n/a
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Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977THEHA00933
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Expiration:
Film Number: D770062-0316
Format: TEL
From: THE HAGUE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1977/newtext/t19770219/aaaaarll.tel
Line Count: 129
Litigation Code IDs:
Litigation Codes:
Litigation History:
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Message ID: e9d560c3-c288-dd11-92da-001cc4696bcc
Office: ACTION EUR
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: 77 THE HAGUE 524
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 08-Mar-2005 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 3258880
Secure: OPEN
Status: NATIVE
Subject: JUDICIAL ASSISTANCE - REQUEST FOR SEIZED CURRENCY
TAGS: CGEN, NL
To: STATE
Type: TE
vdkgvwkey: odhc://SAS/SAS.dbo.SAS_Docs/e9d560c3-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009